

House Bill 185 (COMMITTEE SUBSTITUTE) (AM)

By: Representatives Fleming of the 117<sup>th</sup>, Talton of the 145<sup>th</sup>, Everson of the 106<sup>th</sup>, Bearden of the 68<sup>th</sup>, Keen of the 179<sup>th</sup>, and others

A BILL TO BE ENTITLED  
AN ACT

To amend Article 2 of Chapter 10 of Title 17 of the Official Code of Georgia Annotated, relating to the death penalty generally, so as to provide that the death penalty may be imposed where the jury finds at least one aggravating circumstance but is unable to reach a unanimous verdict as to the sentence, taking into account the vote of the jurors under certain circumstances; to change provisions relating to the requirement of a jury finding of aggravating circumstance and recommending the death penalty; to provide for an effective date and applicability; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

**SECTION 1.**

Article 2 of Chapter 10 of Title 17 of the Official Code of Georgia Annotated, relating to the death penalty generally, is amended by revising Code Section 17-10-31, relating to requirement of a jury finding of aggravating circumstance and recommendation of death penalty, as follows:

"17-10-31.

Except as provided in this Code section or Code Section 17-10-31.1, where ~~Where~~, upon a trial by jury, a person is convicted of an offense which may be punishable by death, a sentence of death shall not be imposed unless the jury verdict includes a finding of at least one statutory aggravating circumstance and a recommendation that such sentence be imposed. Where a statutory aggravating circumstance is found and a recommendation of death is made, the court shall sentence the defendant to death. Where a sentence of death is not recommended by the jury, the court shall sentence the defendant ~~to imprisonment~~ as provided ~~by law~~ in Code Section 17-10-31.1. Unless the jury trying the case makes a finding of at least one statutory aggravating circumstance ~~and recommends the death sentence~~ in its verdict, the court shall not sentence the defendant to death, provided that no such finding of statutory aggravating circumstance shall be necessary in offenses of treason

or aircraft hijacking. This Code section shall not affect a sentence when the case is tried without a jury or when the judge accepts a plea of guilty."

## SECTION 2.

Said article is further amended by revising Code Section 17-10-31.1, relating to requirement of a jury finding aggravating circumstances and recommendation of sentence of death or life without parole, as follows:

"17-10-31.1.

(a) Where, upon a trial by jury, a person is convicted of murder, a sentence of death or life without parole shall not be imposed unless the jury verdict includes a finding of at least one statutory aggravating circumstance ~~and a recommendation that such sentence be imposed.~~

(b) Where a statutory aggravating circumstance is found and a recommendation of life without parole is made, the ~~court~~ judge shall sentence the defendant to imprisonment for life without parole as provided in Code Section 17-10-16.

(c) Where a statutory aggravating circumstance is found and the jury has been impaneled to determine the sentence ~~and the jury has unanimously found the existence of at least one statutory aggravating circumstance but~~ is unable to reach a unanimous verdict as to sentence, the judge shall dismiss the jury and shall impose a sentence of ~~either~~ life imprisonment, ~~or~~ imprisonment for life without parole, or death.

(d) In imposing sentence, if the jury finds beyond a reasonable doubt that the defendant committed at least one statutory aggravating circumstance, the judge may sentence the defendant to:

(1) Imprisonment ~~imprisonment~~ for life without parole ~~only if the court finds beyond a reasonable doubt that the defendant committed at least one statutory aggravating circumstance and the trial court~~ if the judge has been informed by the jury ~~foreman~~ foreperson that upon their last vote, a majority of the jurors cast their vote for a sentence of death or for a sentence of life imprisonment without parole; or

(2) Death if the judge has been informed by the jury foreperson that upon their last vote, at least ten of the jurors cast their vote for a sentence of death;

provided, however, that the ~~trial~~ judge may impose a sentence of life imprisonment or imprisonment for life without parole as provided by law.

~~(d)~~(e) Notwithstanding any other provision of law, during the sentencing phase before a jury, counsel for the state and the accused may present argument and the ~~trial~~ judge may instruct the jury:

(1) That 'life without parole' means that the defendant shall be incarcerated for the remainder of his or her natural life and shall not be eligible for parole unless such person

1 is subsequently adjudicated to be innocent of the offense for which he or she was  
2 sentenced; and

3 (2) That 'life imprisonment' means that the defendant will be incarcerated for the  
4 remainder of his or her natural life but will be eligible for parole during the term of such  
5 sentence."

6 **SECTION 3.**

7 This Act shall become effective on July 1, 2007, and shall apply to all offenses which occur  
8 on or after July 1, 2007.

9 **SECTION 4.**

10 All laws and parts of laws in conflict with this Act are repealed.